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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies on Foreign Participation in the U.S. Telecommunications Markets	)	IB Docket No. 97-142

COMMENTS OF THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

The Office of the United States Trade Representative ("USTR"),on behalf of the statutory inter-agency trade policy organization of the Executive Branch (the "Executive Branch"), respectfully submits the following Comments in response to the Commissions's Order and Notice of Proposed Rulemaking ("NPRM") referenced above.[1] Other Executive Branch agencies continue to review the NPRM and may offer additional comments at a later time. In the interim, the Executive Branch offers these comments specifically with respect to trade policy issues.

United States leadership produced a landmark agreement in February 1997 that will dramatically liberalize world trade in telecommunications services. A decades-old tradition of telecommunications monopolies and closed markets will give way to

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[1] USTR is the Executive Branch agency primarily responsible for developing and coordinating the implementation of U.S. international trade policy, including issuing and coordinating guidance on interpretation of U.S. international trade obligations, such as those arising under the Agreement Establishing the World Trade Organization ("WTO Agreement"). 19 U.S.C. § 2171(c)(1). USTR is the chair of the inter-agency organization created to advise the President on international trade policy. 19 U.S.C. § 1872.

market opening, deregulation and competition -- principally championed by the United States and embodied in the Telecommunications Act of 1996.

Our national interest is clearly advanced by the successful conclusion of the negotiations. Telecommunications is a $725 billion industry, which is expected to grow to more than $1 trillion in less than ten years. U.S. telecommunications service suppliers and equipment manufacturers are the most competitive in the world and are poised to take advantage of the tremendous commercial opportunities created by the opening of telecom services markets. At the same time, we expect that the successful conclusion of the negotiations will save billions of dollars for U.S. consumers as greater competition reduces prices in the United States and world-wide.

Implementation of the commitments all countries made will be no less challenging than the negotiation of those commitments. These commitments are embodied in country schedules to the General Agreement on Trade in Services (GATS), one of the constituent agreements of the WTO Agreement. Along with our major trading partners, the United States committed to provide most-favored nation, market access and national treatment to service suppliers from WTO Members in the provision of all types of basic telecommunications services, whether directly or through investment in U.S. carriers.[2] The United States and 55 other countries also committed to a specific set of pro-competitive regulatory principles. Finally all WTO members are obligated to provide most-favored-nation treatment to service suppliers of other WTO members.

The United States led the way in these negotiations, from its initial market-opening offer in July 1995 through the drafting of the regulatory principles. We must now lead the way in prompt, effective implementation of our commitments. The Executive Branch commends the Commission on taking the first step in implementation with the publication of the NPRM.

The Executive Branch believes that the review process enunciated in the NPRM is consistent with U.S. commitments in the GATS.[3] The Executive Branch expects that the Commission's order will reflect that this review process would apply when there is

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[2] The United States and a number of other countries took exceptions from these obligations for direct-to-home, direct broadcast satellite services and digital audio radio services.

[3] NPRM ¶ 10.

an international obligation to accord MFN treatment to an applicant. The Commission has correctly noted that it will continue to apply a public interest test in reviewing applications for section 214 licenses and waivers of the foreign ownership restrictions under section 310(b)(4) of the Communications Act of 1934. The United States maintains the right under the GATS to determine whether a proposed service will serve the public interest.

As the Commission states in the NPRM, a critical factor in such an analysis is the impact the proposed service will have on competition in U.S. markets. The Commission has long applied such an analysis to U.S. telecommunications companies and we expect the Commission to apply a similar analysis to foreign entrants.

The Commission should inquire whether a proposed service is likely to help or hinder competition and consumer welfare. The Executive Branch agencies believe that, in making this determination, the Commission should evaluate competitive effects, if any, in U.S. telecommunications services markets, in relevant international services markets and on affiliated international routes.

Thus, it is appropriate that the focus of any inquiry should be on determining whether the applicant in question has market power or is affiliated with a carrier with market power. If the applicant or its affiliate has market power, the Executive Branch believes the Commission should examine closely whether the applicant will have the ability and the incentive to leverage its market power to distort competition to the detriment of U.S. consumers. For example, the ability to distort competition may result from the absence of a transparent regulatory framework in the foreign market, the failure of foreign regulations to protect competition, the lack of enforcement of existing regulations or problems with interconnection for the provision of international services. In this inquiry, however, the Commission of course should not require that foreign regulators adhere to the same regulatory approach as that practiced in the United States.

We also believe that additional factors are relevant in determining whether to grant these license applications or foreign ownership waivers. The Commission should continue to evaluate the impact of entry on security of network operations, the maintenance of network integrity, the inter-operability of service and protection of data and other conditions of

operation.[4] These factors are essential to assuring the viability of our public switched networks. In addition, the Commission needs to continue to accord deference to the Executive Branch as set out in the *Foreign Carrier Entry Order*[5] when weighing the other factors affecting the public interest -- national security and law enforcement concerns and foreign and trade policy issues. Finally, the FCC should continue to show deference to the Executive Branch in matters concerning the interpretation of U.S. international commitments,[6] such as our most-favored-nation obligations. The Executive Branch will continue to review applications with respect to these public interest criteria and will advise the Commission as appropriate.

Respectfully submitted,

Jeffrey M. Lang
Deputy United States Trade Representative

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[4] We note that the European Union has instructed its Member States to take into account many of the same public interest factors when issuing licenses. *See* Directive of the European Parliament and of the Council on a Common Framework for General Authorizations and Individual Licenses in the Field of Telecommunications Services.

[5] *Market Entry and Regulation of Foreign-Affiliated Entities,* Report and Order, 11 FCC Rcd. 3873 (1996) ¶¶ 3, 61-72.

[6] *Id.*